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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
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09/923,032

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Richard William Kubalek

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08/24/2006

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EXAMINER

KIDWELL, MICHELE M

ART UNIT

PAPER NUMBER

3761

DATE MAILED: 08/24/2006

Please find below and/or attached an Office communication concerning this application or proceeding.

Office Action Summary

Application No.

09/923,032

Applicant(s)

KUBALEK ET AL.

Examiner

Michele Kidwell

Art Unit

3761

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --
Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) OR THIRTY (30) DAYS, WHICHEVER IS LONGER, FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

Status

- 1) ☒ Responsive to communication(s) filed on 05 June 2006.
2a) ☒ This action is **FINAL**. 2b) ☐ This action is non-final.
3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

Disposition of Claims

- 4) ☒ Claim(s) 1-15 and 29-36 is/are pending in the application.
4a) Of the above claim(s) _____ is/are withdrawn from consideration.
5) ☒ Claim(s) 34-36 is/are allowed.
6) ☒ Claim(s) 1-15 and 29-33 is/are rejected.
7) ☐ Claim(s) _____ is/are objected to.
8) ☐ Claim(s) _____ are subject to restriction and/or election requirement.

Application Papers

- 9) ☐ The specification is objected to by the Examiner.
10) ☐ The drawing(s) filed on _____ is/are: a) ☐ accepted or b) ☐ objected to by the Examiner.
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).
Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

Priority under 35 U.S.C. § 119

- 12) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
a) ☐ All b) ☐ Some * c) ☐ None of:
1. ☐ Certified copies of the priority documents have been received.
2. ☐ Certified copies of the priority documents have been received in Application No. _____.
3. ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).
* See the attached detailed Office action for a list of the certified copies not received.

Attachment(s)

- 1) ☐ Notice of References Cited (PTO-892)
2) ☐ Notice of Draftsperson's Patent Drawing Review (PTO-948)
3) ☐ Information Disclosure Statement(s) (PTO-1449 or PTO/SB/08)
Paper No(s)/Mail Date _____.
4) ☐ Interview Summary (PTO-413)
Paper No(s)/Mail Date _____.
5) ☐ Notice of Informal Patent Application (PTO-152)
6) ☐ Other: _____.

DETAILED ACTION

Claim Rejections - 35 USC § 103

The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

Claims 1 – 6, 8 – 14 and 29 – 33 are rejected under 35 U.S.C. 103(a) as obvious over Parr (EP 0 471 385A1).

With respect to claim 1, Parr discloses a feminine sanitary protection device for use with an undergarment, comprising a liquid impermeable outer cover having a central longitudinal axis, and including a top edge, a bottom edge, a first side edge and a second side edge, a first side section between the first side edge and the central longitudinal axis, and a second side section between the second the side edge and the central longitudinal axis, a first frangible line in the first side section of the outer cover, and a second frangible line in the second side section of the outer cover (figures 4 – 5), at least the liquid absorbent medium being located between the first frangible line and the second frangible line (page 3, lines 45 – 47 and figures 4 – 5), and a release strip located on an exterior surface of the outer cover (page 4, lines 43 – 44), wherein the liquid absorbent device being folded so the outer cover forms the exterior of the folded liquid absorbent device such that, upon removal of portions of the outer cover outboard the frangible lines, unfolding the liquid absorbent device, removing the release strip and

use of the liquid absorbent device on the undergarment, a remaining portion of the outer cover forms a liquid impermeable layer of the liquid absorbent device with the outer cover being located between the liquid absorbent device and the undergarment as set forth in the abstract, on page 3, lines 40 – 49, page 4, lines 29 – 42 and in figures 4 – 5.

The difference between Parr and claim 1 is the provision that the feminine sanitary protection device comprises a liquid permeable liner and an absorbent medium that are integrally joined with the outer cover.

Parr discloses that absorbent articles such as panty liners and sanitary napkins are well known throughout the art (page 2, lines 7 – 8). Parr also discloses that these articles generally have an absorbent, a body facing side and a garment facing side (page 2, line 8). Parr goes on to define the garment facing side comparatively to what is generally known in the art as the backsheet or liquid impermeable outer cover. It can then be reasonably assumed that the body facing side is comparable to what is generally known in the art as the topsheet or the liquid permeable liner.

Alternatively, it is well known in the art to employ a liquid permeable liner in conjunction with the absorbent and the outer cover of a feminine sanitary protection device because the liquid permeable liner allows the user to avoid direct contact with the absorbent material which may be irritating to the user's skin. The use of liquid permeable liner also allows emitted fluids to be absorbed efficiently without allowing the fluids to be retained directly on the user's skin which may also cause irritability, chafing, rash, etc.

Likewise, it is well known in the art that the liquid permeable liner, absorbent and liquid impermeable outer cover are integrally joined in order to hold the product together.

For example, Moder (US 5,827,251) discloses a feminine sanitary protection device comprising a liquid permeable liner and an absorbent medium that are integrally joined with the outer cover as set forth in col. 12, lines 47 – 51.

As to claim 2, Parr discloses a device further comprising a first joining element in the first side section, and a second joining element in the second side section as set forth in figures 1 – 6.

Regarding claims 3 and 9, Parr discloses a device wherein the first joining element and the second joining element join respective portions of the folded outer cover together as set forth in figure 1.

With respect to claims 4 and 31, Parr discloses a device wherein each frangible line is in generally overlapping alignment with itself as set forth in figures 4 – 5.

Regarding claim 5, Parr discloses a device wherein the first frangible line is between the first joining element and the central longitudinal axis, and the second frangible line is between the second joining element and the central longitudinal axis as set forth in figures 4 – 5.

As to claims 6, 12 and 33, Parr discloses a device further comprising a release strip adhesive for the liquid absorbent device located between the outer cover and the release strip wherein the release strip adhesive serves to secure the device to the

undergarment as set forth on page 2, line 58 to page 3, line 6, page 4, lines 29 – 42 and on page 6, lines 2 – 12.

With respect to claim 8, Parr discloses a feminine sanitary protection device for use with an undergarment, comprising a liquid impermeable outer cover having a central longitudinal axis, and including a top edge, a bottom edge, a first side edge and a second side edge, a first side section between the first side edge and the central longitudinal axis, and a second side section between the second the side edge and the central longitudinal axis, means in the first side section and in the second side section for removing at least a portion of the first side section and at least a portion of the second side section from the outer cover (figures 4 – 5), and a liquid permeable liner and an absorbent medium joined with the outer cover to form a liquid absorbent device (page 2, line 9), and a release strip located on an exterior surface of the outer cover (page 4, lines 43 – 44) wherein the liquid absorbent device being folded so the outer cover forms the exterior of the folded liquid absorbent device such that, upon removal of at least a portion of the first side section at least a portion of the second side section from the outer cover and unfolding the liquid absorbent device and use of the liquid absorbent device on the undergarment, a remaining portion of the outer cover is integrally joined with the liquid absorbent device and forms a liquid impermeable layer of the liquid absorbent device that includes the liquid permeable liner and the absorbent medium with the outer cover being located between the liquid absorbent device and the undergarment as set forth in the abstract, on page 3, lines 40 – 49, page 4, lines 29 – 42 and in figures 4 – 5.

With respect to claim 10, Parr discloses a device wherein the liquid absorbent device with its outer cover is tri-folded as set forth on page 3, lines 40 – 43.

Regarding claim 11, Parr discloses a device wherein the removing means is between the joining means as set forth in figure 5.

With reference to claims 13 and 14, Parr discloses a device wherein the removing means includes a first frangible line in the first side section, and a second frangible line in the second side section wherein the frangible lines include perforations as set forth on page 3, lines 45 – 47 and in figures 4 – 5.

With respect to claim 29, Parr discloses a feminine sanitary protection device for use with an undergarment, comprising a liquid impermeable outer cover having a central longitudinal axis, and including a top edge, a bottom edge, a first side edge and a second side edge, a first side section between the first side edge and the central longitudinal axis, and a second side section between the second the side edge and the central longitudinal axis, a first frangible line in the first side section of the outer cover, and a second frangible line in the second side section of the outer cover (figures 4 – 5), a liquid permeable liner and an absorbent medium joined with the outer cover to form a liquid absorbent device (page 2, line 9), at least the liquid absorbent medium being located between the first frangible line and the second frangible line (page 3, lines 45 – 47 and figures 4 – 5), and a release strip located on an exterior surface of the outer cover (page 4, lines 43 – 44) wherein the liquid absorbent device being folded so the outer cover forms the exterior of the folded liquid absorbent device such that, upon removal of portions of the outer cover outboard the frangible lines, unfolding the liquid

absorbent device removing the release strip, and placement adjacent the undergarment for use of the liquid absorbent device on the undergarment, a remaining portion of the outer cover is adhered to the liquid absorbent device, the remaining portion forms a liquid impermeable layer of the liquid absorbent device that includes the liquid permeable liner and the absorbent medium with the outer cover being located between the liquid absorbent device and the undergarment as set forth in the abstract, on page 3, lines 40 – 49, page 4, lines 29 – 42 and in figures 4 – 5.

As to claim 30, Parr discloses a device further comprising a first joining element in the first side section, and a second joining element in the second side section wherein the first joining element and the second joining element join respective portions of the folded outer cover together as set forth in figures 1 – 6.

Regarding claim 32, Parr discloses a device further comprising a first joining element in the first side section, and a second joining element in the section side section wherein the first frangible line is between the first joining element and the central longitudinal axis, and the second frangible line is between the second joining element and the central longitudinal axis as set forth in figures 4 – 5.

Claims 7 and 15 are rejected under 35 U.S.C. 103(a) as obvious over Parr (EP 0 471 385A1) in view of Moder et al. (US 5,827,251).

Parr discloses the invention substantially as claimed.

The difference between Parr and claims 7 and 15 is the provision that the device comprises a vaginal insertion device placed with the liquid absorbent device.

Moder teaches the use of a vaginal insertion device in conjunction with a liquid absorbent device as set forth in figure 1.

It would have been obvious to one of ordinary skill in the art to modify the absorbent device of Parr to provide a vaginal insertion device because the combination of the absorbent device and the vaginal insertion device provides added leakage protection and a more discreet and convenient product that saves time and money as taught by Moder in col. 4, line 65 to col. 5, line 4 and col. 5, lines 23 – 42.

Response to Arguments

Applicant's arguments filed February 27, 2006 and June 5, 2006 have been fully considered but they are not persuasive.

With respect to the applicant's argument that Parr teaches away from the use of a release strip, the examiner notes that Parr explicitly discloses the use of such on page 2, line 57 to page 3, line 6 and on page 4, lines 43 – 44.

Parr discloses adhesive means applied in an attachment zone and covered by release means. The examiner considers the release means as a release strip that is removed (i.e. disengaged) when the user unfolds the device.

Allowable Subject Matter

Claims 34 – 36 are allowed.

Conclusion

Applicant's amendment necessitated the new ground(s) of rejection presented in this Office action. Accordingly, **THIS ACTION IS MADE FINAL**.

See MPEP § 706.07(a). Applicant is reminded of the extension of time policy as set forth in 37 CFR 1.136(a).


A shortened statutory period for reply to this final action is set to expire THREE MONTHS from the mailing date of this action. In the event a first reply is filed within TWO MONTHS of the mailing date of this final action and the advisory action is not mailed until after the end of the THREE-MONTH shortened statutory period, then the shortened statutory period will expire on the date the advisory action is mailed, and any extension fee pursuant to 37 CFR 1.136(a) will be calculated from the mailing date of the advisory action. In no event, however, will the statutory period for reply expire later than SIX MONTHS from the date of this final action.

Any inquiry concerning this communication or earlier communications from the examiner should be directed to Michele Kidwell whose telephone number is 571-272-4935. The examiner can normally be reached on Monday thru Friday.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Tatyana Zalukaeva can be reached on 571-272-1115. The fax phone number for the organization where this application or proceeding is assigned is 571-273-8300.

Art Unit: 3761

Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free). If you would like assistance from a USPTO Customer Service Representative or access to the automated information system, call 800-786-9199 (IN USA OR CANADA) or 571-272-1000.


Michele Kidwell
Primary Examiner
Art Unit 3761